

ELECTRONICALLY FILED
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 17 **JOINT LIMITED OPPOSITION BY THE FUND COMMITTEES
 TO DEBTORS' MOTION FOR ORDER APPROVING
 CONTINUED USE OF CASH THROUGH OCTOBER 29, 2006
 PURSUANT TO THIRD REVISED BUDGET (AFFECTS ALL DEBTORS)**

1
2 **UNITED STATES BANKRUPTCY COURT**
3 **DISTRICT OF NEVADA**

4 In re:) BK-S-06-10725-LBR
5 USA COMMERCIAL MORTGAGE COMPANY,) Chapter 11
6 Debtor.)
7 In re:) BK-S-06-10726-LBR
8 USA CAPITAL REALTY ADVISORS, LLC,) Chapter 11
9 Debtor.)
10 In re:) BK-S-06-10727-LBR
11 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,) Chapter 11
12 Debtor.)
13 In re:) BK-S-06-10728-LBR
14 USA SECURITIES, LLC,) Chapter 11
15 Debtor.)
16 Affects)
17 All Debtors)
18 USA Commercial Mortgage Co.) Date: August 4, 2006
19 USA Securities, LLC) Time: 9:30 a.m.
20 USA Capital Realty Advisors, LLC)
21 USA Capital Diversified Trust Deed Fund LLC)
22 USA First Trust Deed Fund, LLC)

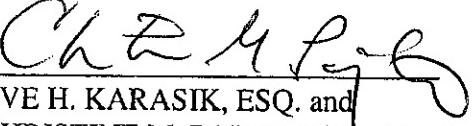
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24 **JOINT LIMITED OPPOSITION BY THE FUND COMMITTEES**
25 **TO DEBTORS' MOTION FOR ORDER APPROVING**
26 **CONTINUED USE OF CASH THROUGH OCTOBER 29, 2006**
27 **PURSUANT TO THIRD REVISED BUDGET (AFFECTS ALL DEBTORS)**

1 **TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:**

2 In response to the "Motion for Order Approving Continued Use of Cash Through
 3 October 29, 2006 Pursuant to Third Revised Budget" (the "Cash Management Motion")¹, filed
 4 by USA Commercial Mortgage Company ("USACM"), on behalf of itself and its affiliated
 5 debtors (each, a "Debtor" and, collectively, the "Debtors") on July 7, 2006 and the third revised
 6 budget (the "Third Revised Budget") that the Debtors filed on July 19, 2006, the Official
 7 Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the "FTDF
 8 Committee") and the Official Committee of Equity Security Holders of USA Capital Diversified
 9 Trust Deed Fund, LLC (the "Diversified Trust Deed Committee" and, together with the FTDF
 10 Committee, the "Fund Committees"), hereby file this limited opposition ("Limited Opposition").

11 This Limited Opposition is made and based upon the Points and Authorities filed
 12 herewith; the pleadings, papers and records on file in this action; and any evidence and oral
 13 argument to be considered at the time of the hearing of the Cash Management Motion.

14 Dated this 27th day of July, 2006.

15 
 16 EVE H. KARASIK, ESQ. and
 17 CHRISTINE M. PAJAK, ESQ., Members of
 18 STUTMAN, TREISTER & GLATT, P.C.

19 and

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26
 27
 28 ¹ Terms not otherwise defined herein shall have the same meanings ascribed to them in the
 Cash Management Motion.

POINTS AND AUTHORITIES

Through their respective financial advisors, the Fund Committees have voiced their concerns with the Third Revised Budget to Debtors' management. Since these concerns have not yet been resolved, the Fund Committees have no other option than to object to the numerous deficiencies in the Third Revised Budget, which are set forth below.

A. The Funds Should Not Be Triple-Charged for Professional Services Provided to Their Estates.

Most troubling to the Fund Committees is that the Debtors seek to triple-charge the estates of USA Capital First Trust Deed Fund, LLC (the "First Trust Deed Fund") and USA Capital Diversified Trust Deed Fund, LLC ("Diversified" and, together with the First Trust Deed Fund, the "Funds") for professional services provided to their estates.

First, like all Direct Lenders, the Funds are charged a service fee in connection with their loans serviced by USACM. Second, the Third Revised Budget contemplates that the Funds will pay certain management fees. Finally, the Debtors have indicated their intention to allocate the fees and costs of the Debtors' professionals across the Debtors' five estates, including the Funds. While the Funds are incurring three separate fees, it is the understanding of the Fund Committees that the Funds are not getting the benefit of three different types of services. Debtors' management is simply doing the same work on behalf of the Funds but charging the Funds three separate times for this work. As the Funds will bear their proportionate share of the fees and expenses of the Debtors' professionals, which will necessarily include the cost of managing the Funds, no basis exists for the Funds to incur any additional management fees.² The Fund Committees, therefore, object to the Funds' payment of the so-called management fees as set forth in the Third Revised Budget.

In addition, the Funds will likely have claims against USA Capital Realty, LLC, the manager of the funds, and USACM, the entity which contemplates spending the purported postpetition management fees, based upon their prepetition misconduct. To the extent the Debtors are able to continue to transfer monies from the Funds for the benefit of USACMC and the same are expended, such rights would likely be prejudiced.

1 **B. Without the Allocation of the Debtors' Professional Fees, the Third Revised
2 Budget is Meaningless.**

3 As the Fund Committees have emphasized in numerous filings with the Court and
4 communications to the Debtors, the Debtors' professionals must disclose any proposed allocation
5 of their fees and expenses across the Debtors' estates. The Third Revised Budget, however,
6 contemplates that the Debtors' professionals will be paid solely from the USACM estate. Unless
7 Debtors' professionals have determined that such fees and expenses will not be apportioned, this
8 assumption is highly misleading. Without this allocation, the Fund Committees do not know the
9 extent of their administrative burden of these cases. Furthermore, as currently budgeted,
10 USACM relies on alleged "estate funds" in the Collections Account to pay for these professional
11 services. Once again, the Debtors needlessly stir up a hornet's nest. It is not clear that, if
12 properly allocated, whether the Debtors would need to rely on these funds to pay professional
13 fees. It is, thus, critical that the Debtors allocate the fees and expenses among the Debtors'
14 estates prior to any Court approval of a proposed budget.

15 **C. The Alleged Estate Funds in the Collections Account Should Not Be Used by
16 the Debtors Absent a Court Determination That the Money Belongs to
17 USACM's Estate.**

18 For a second time, the Debtors have asserted, through their budget, not their
19 moving papers, that certain amounts in the Collections Account is property of the USACM's
20 estate. The Collections Account is now divided into two parts – (a) Investor Funds and
21 (b) Estate Funds. While the Debtors fail to explain any of this in their Cash Management
22 Motion, the Fund Committees understand that the Debtors assert that the "re-payment" of pre-
23 paid interest is property of USACM's estate. The Debtors provide no support for this allegation.

24 The Debtors cannot wholesale re-characterize certain funds in the Collections
25 Account as estate funds by simply including it is a separate line item in the Third Revised
26 Budget. Absent a further court order, no interest collected on behalf of the Debtors' investors nor
27 interest earned on the Collections Account should be used to pay the Debtors' operating
28 expenses. All money collected in connection with the loans that the Debtors brokered should be
 placed in the Collections Account and accounted for on a loan-by-loan basis. At this time, the

1 Debtors have not asserted any rationale to segregate out a portion of the Collections Account as
 2 "Estate Funds".

3 Accordingly, the Fund Committees request that the Debtors be required to amend
 4 their Third Revised Budget by (i) placing the collection of all interest and principal payments in
 5 the Collections Account and accounting for such sums on a loan by loan basis and (ii) keeping
 6 all earned interest from the Collections Account in the Collections Account. Furthermore, the
 7 Fund Committees request that, to the extent that the Debtors seek to assert that any of the funds
 8 in the Collections Account belong to the Debtors' estates and seek Court authority to use such
 9 funds, they be required to file a motion on regular notice requesting such relief.

10 **D. Distributions to Investors.**

11 Through the "Motion To Distribute Funds And To Grant Ordinary Course
 12 Releases And Distribute Proceeds" (the "Distribution Motion"), the Debtors seek Court
 13 authority to make distributions to investors. According to the Debtors' supplement to the
 14 Distribution Motion (the "Distribution Supplement"), the Debtors state that approximately \$64.7
 15 million will be distributed to investors as part of their proposed initial distribution. The Third
 16 Revised Budget, however, states that the Debtors will be making distributions to investors of
 17 approximately \$88.3 million during the week ending August 6, 2006. The Debtors should be
 18 required to reconcile their numbers.

19 The Fund Committees, however, are most troubled by the fact that the Debtors do
 20 not provide for any distribution to the Funds' estates in the Third Revised Budget. Clearly,
 21 distributions must be paid to the Funds before distributions are made to the Fund members.
 22 While the Debtors assert that the Diversified estate will not receive any funds from the initial
 23 distribution, the Distribution Supplement indicates that the First Trust Deed Fund estate is
 24 expected to receive approximately \$1.8 million. Yet, the Third Revised Budget does not reflect
 25 this distribution being made nor does it contemplate that, following appropriate holdbacks,
 26 distributions shall be made to members of First Trust Deed Fund.

27 Finally, the Fund Committees oppose weekly distributions to investors as set forth
 28 in the Third Revised Budget. The administrative burden of making weekly distributions is

1 simply too great in both dollars and time. Prior to the Petition Date, investors received monthly,
 2 not weekly, distributions, and monthly distributions would be acceptable with appropriate
 3 holdbacks for expenses as discussed below. There is simply no reason why the Debtors' estates
 4 should be burdened with the time and expense of making weekly distributions to investors.

5 **E. The Debtors Should be Required to Provide for Adequate Holdbacks Before
 6 Making Distributions to Investors.**

7 The Third Revised Budget contemplates that distributions will be made to
 8 investors without the Debtors holding back the necessary amounts to cover the estates' expenses.
 9 Under the standard loan servicing agreement, USACM is entitled to seek from each direct lender
 10 its pro rata share of "attorney's fees, trustee's fees and the foreclosure costs" and may holdback
 11 payments on investors' loans until such payments have been made. See Loan Servicing
 12 Agreement, § 4. In addition, the Debtors should also holdback the appropriate amounts to cover
 13 the costs of the administration of these bankruptcy cases, including fees and costs incurred by
 14 counsel for the Direct Lender Committee. The Debtors should be required to update the Third
 15 Revised Budget to include these holdback amounts. Furthermore, it is the understanding of the
 16 Fund Committees that the line item titled "Loan Servicing Expenses" relate to anticipated
 17 foreclosure costs. Again, payments of foreclosure costs should not be borne by the USACM
 18 estate but rather should be charged against the direct lenders who will benefit from such
 19 foreclosures.

20 With respect to the Funds, the Debtors should also indicate in their revised budget
 21 the amount for all administrative expenses and unsecured claims that should be held back before
 22 distributions are made to Fund investors. As the FTDF Committee has previously discussed with
 23 the Debtors, it believes that the appropriate holdback amount for the first interim distribution to
 24 members of the First Trust Deed Fund should be \$800,000 for (i) fees incurred by professionals
 25 of the FTDF Committee³ and (ii) a reserve for the unsecured claims that have been asserted
 26 against the FTDF.

27
 28 ³ As the Debtors have not included holdbacks for amounts incurred by the Debtors' professionals
 from distributions to investors, the FTDF Committee has not included any such amounts in this
 proposed holdback.

1 **F. Professional Fees.**

2 The Third Revised Budget includes accruals of payments on behalf of various
 3 professionals of the Debtors' estates but does not accurately reflect the estimated amounts for
 4 fees and expenses that the FTDF Committee had previously provided to the Debtors. The FTDF
 5 Committee understands that the Debtors will update this estimate. Notwithstanding any
 6 correction by the Debtors to update this estimate, the Fund Committees believe that the budgeted
 7 amounts may not, in the end, be accurate and reserve the right to seek compensation that varies
 8 with the amounts contained in the Third Revised Budget.

9 Furthermore, in footnote "a" on page 2 of the Third Revised Budget, the Debtors
 10 assert that the "[s]ource of payment for professional fees for the investor and fund committees
 11 will be via surcharge or some other source yet to be determined." While this may be true for
 12 payments made to the professionals of the Direct Lender Committee, the same cannot be said of
 13 the Fund Committees. Payments to the Fund Committees will come from their respective
 14 estates. As distributions are made to the Funds, sufficient monies will be available to pay the
 15 professionals of the Fund Committees. Accordingly, this footnote should delete any reference to
 16 the Fund Committees.

17 **G. In Connection With The Budgeting Process, Which Is On A Weekly
 18 Basis, The Court Should Require Weekly Cash Flow Updates To The
 Committees.**

19 The Fund Committees have repeatedly requested that the Debtors provide them
 20 with weekly cash reports, which compare the Debtors actual cash flow against their budgeted
 21 cash flow. Without these updates, the Fund Committees cannot monitor the Debtors' use of cash
 22 nor evaluate whether the Debtors are in compliance with their budget. Only recently have the
 23 Debtors indicated that they will provide the Fund Committees with such a report. To date,
 24 however, the Fund Committees have yet to receive any such report. The Fund Committees,
 25 therefore, request that the Court require, as a condition to the continued use of cash, that the
 26 Debtors to provide all committees appointed in these cases weekly cash reports that compare the
 27 Debtors' actual use of cash against their budgeted use of cash.

28

III.

CONCLUSION

For the reasons stated above, the Fund Committees request that the Court (i) withhold approval of the Debtors' Cash Management Motion and Third Revised Budget until the Debtors have filed an updated budget in accordance with the modifications requested herein and (ii) require the Debtors, as a condition to the continued use of cash, to circulate to all committees appointed in these cases weekly cash reports that compare the Debtors' actual use of cash against their budgeted use of cash.

Respectfully submitted this 27TH day of July, 2006.

SUBMITTED BY:

**OFFICIAL COMMITTEE OF EQUITY
SECURITY HOLDERS OF USA CAPITAL
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